No. 90-898

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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JANICE G. CLARK, *et al.*,
Petitioners,

v.

CHARLES "BUDDY" ROEMER, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY BRIEF FOR PETITIONERS

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In opposition to the petition for certiorari, the respondents state:

> When, as here, . . . a law simply adds a much-needed judicial seat to a multi-member district, in the absence of discriminatory intent such a statute is not covered by *either* Section 2 (because the "results test" is inapplicable to the judiciary) or by Section 5 (because Section 5 cannot be used as a guise to preclude a state from adding a judicial seat when such a seat cannot be enjoined under Section 2).

Brief in Opposition at 23 (emphasis added). This highlights the need for the granting of a writ of certiorari.

Because of the interrelationship of Section 2 and Section 5, the decision below has led not only to questions about Section 2's applicability but also the applicability of Section 5. Thus, in addition to contending that Section 2 is irrelevant, the State of Louisiana also asserts that Section 5 is unavailing, even though this Court has held to the contrary in *Brooks v. State Board of Elections*, No. CV 288-146 (S.D. Ga. Dec. 1, 1989) (three-judge court), *aff'd mem.*, 112 L.Ed.2d 243 (1990), and *Haith v. Martin*, 618 F.Supp. 410 (E.D.N.C. 1985) (three-judge court), *aff'd mem.*, 477 U.S. 901 (1986). *See also, Clark v. Roemer*, 59 U.S.L.W. 3360-3361, No. A-327 (Nov. 2, 1990, as modified Nov. 5, 1990) (injunction pending appeal against elections for unprecleared judgeships). This conflict requires the grant of certiorari to resolve the Section 2 issue, and also illustrates the need to note probable jurisdiction in *Clark v. Roemer*, No. 90-952 (jurisdictional statement filed December 14, 1990), which is the appeal in this same litigation from the three-judge district court's resolution of the Section 5 claims regarding Louisiana judgeships.

Most of the arguments in the respondents' brief opposing the petition for certiorari were presented to this Court in 1988 when Louisiana state officials unsuccessfully sought their own writ of certiorari from the Fifth Circuit's previous decision in *Chisom v. Edwards*, 839 F.2d 1056 (5th Cir.), *cert. denied*, 109 S.Ct. 390 (1988), holding Section 2 applicable to judicial elections. This Court did not find the arguments sufficiently compelling at that time to grant certiorari and review the Fifth Circuit's decision in *Chisom* that Section 2 covers judicial elections. Accordingly, the same arguments do not provide a suffiicent basis to prevent the Court from granting certiorari now that the Fifth Circuit has reversed itself and said Section 2 does not apply.

Indeed, it would appear quite confusing for this Court to have denied certiorari in *Chisom* when the Fifth Cir-

cuit said judicial elections are covered, and some two years later to follow the respondents' current suggestion and deny certiorari even though the Fifth Circuit has now said the exact opposite. This is an important issue and the petition for writ of certiorari should be granted to resolve it.

Respectfully submitted,

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